

## Internal Revenue Service

## Department of the Treasury

Washington, DC 20224

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Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-100709-10

Date: JUNE 28, 2010

In Re:

### Legend

Settlor =  
Spouse =  
Residence =

Trust =

Son 1 =  
Son 2 =  
Date 1 =  
Date 2 =  
Date 3 =  
X =  
Y =  
Year 1 =

Dear :

This responds to your March 2, 2010 letter and other correspondence requesting a ruling under § 2702 of the Internal Revenue Code with respect to the proposed modification and proposed amendment and restatement to a trust.

The facts submitted are as follows:

Prior to Date 1, Settlor owned Residence. On Date 1, Settlor deeded her interest in Residence to Trust. Trust provides that Settlor would retain a term interest to possess and occupy Residence for X years.

Article V, Section C of Trust provides, in relevant part, that upon the expiration of the X year period, if Settlor is still living, Settlor's retained interest and any interest of

Settlor's spouse, Spouse, is to expire and Trust is to continue for the benefit of Settlor's issue. Trust is to terminate and be distributed *per stirpes* to Settlor's issue in complete liquidation of Trust on the later to occur of Settlor's death or Spouse's death.

Settlor served as trustee of Trust. Trust was intended to qualify as a qualified personal residence trust (QPRT) as described in § 25.2702-5(c). Settlor reported the transfer of Residence to Trust on a Form 709, United States Gift (and Generation-Skipping Transfer) Tax return, for Year 1.

Settlor has two children, Son 1 and Son 2. Sons are adults and the remainder beneficiaries of Trust.

On Date 2, Settlor, in her capacity as trustee of Trust, with the joinder and consent of Son 1 and Son 2 executed Modification to modify Trust. Modification is effective on Date 3. Modification provides that upon the expiration of the X year period, Settlor's children are granted the power to appoint an equal share of the corpus of the Trust to themselves, or by unanimous agreement, they may direct the trustee to amend and restate the terms of Trust so as to provide a term interest to Settlor, Settlor's Spouse, or both, as a gift by Settlor's children.

Son 1 and Son 2 intend to amend and restate Trust to grant a Y year term interest to Settlor to possess and occupy Residence on or before Date 3. This term is renewable by written amendment to the agreement acknowledged by the term holder.

You have requested the following rulings:

1. Sections 2702(a) and 2702(a)(2) will not apply to the modification and proposed amendment and restatement of Trust.
2. Upon executing the amendment and restatement of Trust in which Son 1 and Son 2 grant a term interest to Settlor and upon each renewal of the term interest, Son 1 and Son 2 will make a transfer of property by gift within the meaning of § 2501 to Settlor.

## LAW AND ANALYSIS

Section 2501(a) provides that a tax is imposed for each calendar year on the transfer of property by gift during such calendar year.

Section 2511(a) provides that the gift tax applies whether the transfer is in trust or otherwise, whether the gift is direct or indirect and whether the property is real or personal, tangible or intangible.

Section 2514(b) provides that the exercise or release of a general power of appointment shall be deemed the transfer of property by the individual possessing the power.

Section 2514(c) provides that the term “general power of appointment” means a power which is exercisable in favor of the individual possessing the power, his estate, his creditors, or creditors of his estate.

Section 2702(a)(1) provides that, solely for purposes of determining whether a transfer of an interest in trust to (or for the benefit of) a member of the transferor's family is a gift (and the value of such transfer), the value of any interest in such trust retained by the transferor or any applicable family member (as defined in § 2701(e)(2)) shall be determined as provided in § 2702(a)(2).

Section 2702(a)(2) provides that the value of any retained interest that is not a qualified interest is treated as being zero. The value of any retained interest that is a qualified interest is determined under § 7520.

Section 2702(a)(3)(A)(ii) provides that § 2702(a) shall not apply to any transfer if such transfer involves the transfer of an interest in trust all the property in which consists of a residence to be used as a personal residence by persons holding term interests in such trust.

Section 25.2702-5(a)(1) of the Gift Tax Regulations provides, in part, that § 2702 does not apply to a transfer in trust meeting the requirements of that section. A transfer in trust meets the requirements of the section only if the trust is a personal residence trust (as defined in § 25.2702-5(b)). A trust meeting the requirements of a qualified personal residence trust (as defined in § 25.2702-5(c)) is treated as a personal residence trust.

Section 25.2702-5(c)(1) provides that for purposes of § 2702(a)(3)(A)(ii), a qualified personal residence trust is a trust meeting all the requirements of the section. These requirements must be met by provisions in the governing instrument, and these governing instrument provisions must by their terms continue in effect during the existence of any term interest in the trust.

Section 25.2702-5(c)(5) provides that, in general, except as otherwise provided in § 25.2702-5(c)(5)(ii) and § 25.2702-5(c)(8), the governing instrument of a qualified personal residence trust must prohibit the trust from holding, for the entire term of the trust, any asset other than one residence to be used or held for use (within the meaning of § 25.2702-5(c)(7)(i)) as a personal residence of the term holder. Under § 25.2702-5(c)(5)(ii), the trust may hold certain assets listed in that section in addition to the personal residence.

Section 25.2702-5(c)(2)(i) provides that a personal residence of a term holder is either the principal residence of the term holder (within the meaning of § 1034); one other residence of the term holder (within the meaning of § 280A(d)(1) but without regard to § 280A(d)(2)); or an undivided fractional interest in either.

Section 25.2702-5(c)(2)(ii) provides that a personal residence may include appurtenant structures used by the term holder for residential purposes and adjacent land not in excess of that which is reasonably appropriate for residential purposes (taking into account the residence's size and location).

Section 25.2702-5(c)(2)(iii) provides that a residence is a personal residence only if its primary use is as a residence of the term holder when occupied by the term holder. A residence is not used primarily as a residence if it is used to provide transient lodging and substantial services are provided in connection with the provision of lodging (e.g., a hotel or a bed and breakfast). A residence is not a personal residence if, during any period not occupied by the term holder, its primary use is other than as a residence.

Section 4.01(52) of Rev. Proc. 2008-3, 2008-1 I.R.B. 110, 118, provides that rulings will not ordinarily be issued on whether a trust with one term holder satisfies the requirements of § 2702(a)(3)(A) and § 25.2702-5(c) to be a QPRT. Rev. Proc. 2003-42, 2003-1 C.B. 993, provides sample trust provisions for QPRTs. The Service will recognize a trust as meeting all of the requirements of § 2702(a)(3)(A) and § 25.2702-5(c) if the trust instrument is substantially similar to the sample in section 4 of Rev. Proc. 2003-42 and the trust operates in a manner consistent with the terms of the trust instrument and is a valid trust under applicable local law.

Accordingly, based on the facts submitted and the representations made, we conclude that §§ 2702(a)(1) and 2702(a)(2) will not apply to the modification and proposed amendment and restatement of Trust, as long as this modification and proposed amendment and restatement, pursuant to which Residence will be transferred from Son 1 and Son 2 to Settlor is substantially similar to the sample in section 4 of Rev. Proc. 2003-42 and the trust operates in a manner consistent with the terms of the trust instrument and is a valid trust under applicable local law, and if Residence qualifies as a personal residence as defined in § 25.2702-5(c)(2). We also conclude that, upon executing the amendment and restatement as well as any extensions, Son 1 and Son 2 will be transferring a term interest in residence to Settlor by gift within the meaning of § 2501.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied concerning

whether the transfer of Residence to Settlor, pursuant to the modification of Trust, would result in Residence being included in the gross estate of Settlor under § 2036.

The GST tax rulings in this letter apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of provides that it may not be used or cited as precedent.

Sincerely,

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Lorraine E. Gardner  
Senior Counsel, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure:

Copy of letter for section 6110 purposes